NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755-6000

FOIA Case: 69960A
4 June 2013

Mr. Michael Morisy
MuckRock News Dept. MR 2411
P.O. Box 55819
Boston, MA 02205-5819

Dear Mr. Morisy:

This interim response to your Freedom of Information Act (FOIA) request submitted via the Internet on 23 February 2013, which was received by this office on 25 February 2013, for "All documents containing reference to a computer program 'wauserv.dll', a rogue program." Since your request relates to wauserv.dll, we have interpreted your request to be for records related to NSA/CSS's Information Assurance Mission. Your request has been assigned Case Number 69960.

For purposes of this request and based on the information you provided in your letter, you are considered an "all other" requester. You must pay for search time in excess of 2 hours and duplication in excess of 100 pages.

Your request for a waiver of fees has been denied. There is a two-pronged test a requester must satisfy to qualify for a fee waiver. First, the requested information must be in the public interest. Second, the request must not be primarily in the requester's commercial interest. The following six factors further define the two-pronged waiver test, and a requester must meet the first four factors to qualify under the public interest prong:

1. The subject of the request must concern the "operations and activities of the government."

2. The disclosure of information is "likely to contribute to an understanding of government operations and activities."

3. The disclosure of the requested information will "contribute to public understanding."

4. The disclosure is likely to contribute "significantly" to public understanding of government operations and activities.

5. The requester has a commercial interest that would be furthered by the requested disclosure.

6. Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, thereby rendering the disclosure "primarily in the commercial interest of the requester."

In analyzing these criteria, I have determined that you do not meet three of these factors. Based on the information provided within the FOIA request, you have not provided evidence to sufficiently meet factor 2 regarding how the information is "likely to contribute to an understanding of government operations and activities." You have not provided evidence to sufficiently meet factor 3 regarding how the information will "contribute to public understanding." This factor generally means that the requester can disseminate the information to the general public. You do not describe specifically your qualifications, the nature of your research, and the purpose for which you intend to use the requested information. Specialized knowledge may be required to extract, synthesize, and effectively convey the information to the public. You do not provide evidence of past analysis on this subject matter nor any evidence of past use of materials gained through FOIA requests. Furthermore, you do not provide an indication of your ability to understand and process the information such that the public will be able to interpret your analysis of the records. Therefore, for the reasons described above, you also do not meet factor 4. You have not shown how this information will "significantly" contribute to public understanding of government operations or activities. To warrant a waiver, the public's understanding of the information, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent.

After reviewing your request, I have determined that you do not meet the standards of factors 2, 3 and 4 of the public interest prong. You do not qualify for a fee waiver because you have not satisfied the public interest requirement of the FOIA.

The Initial Denial Authority for NSA information is the Associate Director for Policy and Records, David J. Sherman. If you disagree with the decision regarding fee waiver denial, you may file an appeal to the NSA/CSS Freedom of Information Act Appeal Authority. The appeal must be postmarked no later than 60 calendar days after the date of the initial denial. The appeal shall be

in writing addressed to the NSA/CSS FOIA Appeal Authority (DJ4), National Security Agency, 9800 Savage Road STE 6248, Fort George G. Meade, MD 20755-6248. The appeal shall reference the fee waiver denial and shall contain, in sufficient detail and particularity, the grounds upon which you believe waiver of fees is warranted. The NSA/CSS FOIA Appeal Authority will endeavor to respond to the appeal within 20 working days after receipt, absent any unusual circumstances.

We estimate that the costs involved to search for material responsive to your request will be approximately $528.00. Fees are assessed in accordance with DoD Regulation 5400.7-R. Search fees are computed at $44.00 an hour. You are entitled to two hours of search at no charge, therefore, we estimate your total cost to be approximately $440.00 ($528.00 - $88.00 for two hours of search).

Please be advised that your agreeing to incur these fees will not necessarily result in the disclosure to you of all or any information you seek. If records are found which are responsive to your request, a detailed review to determine the releasability of the information would follow. It has been our experience that any records responsive to your request if such records exist, may be classified or otherwise exempt from release in accordance with the exemption provisions of the FOIA. The application of these exemptions to NSA information has been consistently approved by the Federal Judiciary.

This is only an estimate. If, as we process your request, we determine that fees will be greater than the estimate, we will so notify you before continuing with our search. In addition, please be aware that an estimate for duplication fees is not included in the above amount because we cannot determine the number of pages to be released until the case has been processed.

If you would like us to proceed with the search for information responsive to your request, please remit to the FOIA office (see below for address) a check or money order made payable to the Treasurer of the United States in the amount of $220.00, or provide a statement regarding your willingness to pay all assessable fees. This amount represents one-half of the total search estimate. Since this is only an estimate, our procedure is to request half of the estimated search costs up front, allowing us to charge any remaining difference upon completion of the entire request. Please include the number assigned to your case (69960) on any correspondence to ensure that your account is properly credited. If we do not hear from you within 30 days of the date of this letter, we will assume that you are no longer interested in